

NEIL ABERCROMBIE  
GOVERNOR



CATHERINE PAYNE  
CHAIRPERSON

STATE OF HAWAII  
**STATE PUBLIC CHARTER SCHOOL COMMISSION**  
**(‘AHA KULA HO‘ĀMANA)**  
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### RECOMMENDATION SUBMITTAL

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DATE: September 11, 2014

TO: Catherine Payne, Chairperson

FROM: Tom Hutton, Executive Director

AGENDA ITEM: Action on Commission Standing Committee Membership and, Pursuant to Section 92-16, Hawaii Revised Statutes, and on Appointment of Master to Hold Hearings and Take Testimony on Administrative Rules

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#### I. DESCRIPTION

Recommendation that the Commission appoint Ernest Nishizaki as a master to hold hearings and take testimony on the Commission's proposed administrative rules.

#### II. AUTHORITY

Pursuant to Hawaii Revised Statutes ("HRS") §92-16(a), "Any board (which term as used in this section means any board or commission of the State or of any political subdivision of the State) which is by law authorized or required to hold hearings for the purpose of receiving evidence, shall have the following powers, in addition to those provided for by any other law, in connection with the hearings . . . (3) To appoint, by written resolution adopted by vote of a majority of the board, a master or masters (who may, but need not be, a member or members of the board, or a disinterested attorney at law or other person, or a combination of any of them) to hold the hearing and take testimony upon the matters involved in the hearing and report to the board the master's or their findings and recommendations, together with a transcript of the hearing or a summary of the evidence and testimony taken thereat, and to adopt the findings and recommendations, in whole or in part, or otherwise act upon the report and transcript or summary, and, in the board's discretion, to hold further hearings and take further evidence and testimony in connection therewith, before taking final action thereon. Any master may be paid such reasonable compensation as shall be determined by the board, provided that no member of the board shall be eligible to receive any additional compensation for services as master."

Pursuant to HRS §302D-3.5, “the Commission may adopt rules pursuant to chapter 91 to administer and implement [chapter 302D].”

### III. BACKGROUND

On July 2, 2014, Governor Abercrombie approved the Commission to hold public hearings on the proposed promulgation of Chapter 8-501 and Chapter 8-505, Hawaii Administrative Rules (“HAR”), entitled “State Public Charter School Commission Rules of Practice and Procedure” and “Applications, Renewals or Nonrenewals, and Revocations,” respectively. Staff is looking to schedule hearings in Kauai County, The City and County of Honolulu, Maui County, and Hawaii County (Hilo and Kona), starting in mid-September.

On July 10, 2014, the Commission adopted a resolution to appoint Commissioners as masters to preside over administrative rules hearings and to also list the terms, conditions, and powers of the masters. At that time, Ernest Nishizaki had not been appointed to the Commission; he was appointed to the Commission in August.

### IV. DECISION MAKING STATEMENT

At the July 10, 2014 meeting, the Commission expressed the intent to have every Commissioner be able to serve as a master. In order to appoint Ernest Nishizaki as a master, the Commission must amend its July 10, 2014 resolution. The original July 10, 2014 resolution is attached as **Exhibit A**.

### V. RECOMMENDATION

**“Moved to amend the July 10, 2014 resolution by including Ernest Nishizaki as one of the individuals listed that is appointed as masters of public hearings on the Commission’s proposed promulgation of its Administrative Rules, effective as of July 10, 2014 and continuing until December 31, 2014, unless extended by the Commission by a subsequent resolution.”**

**Exhibit A**

July 10, 2014 Resolution

**At the July 10, 2014 meeting of the State Public Charter School Commission ("Commission"), the following resolution was proposed and approved by the Board:**

**WHEREAS, in accordance with law, the proposed promulgation of the State Public Charter School Commission's ("Commission") of Chapter 8-501 and Chapter 8-505, Hawaii Administrative Rules ("Administrative Rules") requires holding public hearings;**

**WHEREAS, pursuant to Hawaii Revised Statutes, Section 92-16(a), the Commission has the power to appoint a master or masters to hold hearings and take testimony;**

**WHEREAS, the Commission intends to hold public hearings in Hawaii County, Maui County, Kauai County, and the City and County of Honolulu;**

**WHEREAS, the purpose of these public hearings is to take testimony on the Administrative Rules and not engage in decision-making;**

**WHEREAS, a single appointed master will have the power to hold and preside over these public hearings; and**

**WHEREAS, the Commission finds that appointing a master is a reasonable and efficient way to hold these public hearings;**

**NOW, THEREFORE, IT IS RESOLVED, that the individuals listed below are hereby each appointed as masters of public hearings on the Commission's proposed promulgation of its Administrative Rules, effective as of July 10, 2014 and continuing until December 31, 2014, unless extended by the Commission by a subsequent resolution:**

- 1. Jill Baldemor;**
- 2. Mitch D'Olier;**
- 3. Peter Hanohano;**
- 4. Kalehua Krug;**
- 5. Catherine Payne;**
- 6. Karen Street;**
- 7. Roger Takabayashi; and**
- 8. Peter Tomozawa;**

**AND IT IS FURTHER RESOLVED, that the aforementioned masters will abide by the terms and conditions and have the powers listed below:**

- A single master shall be the presiding officer of each hearing;**
- The master shall conduct each hearing in a way as to afford interested persons a reasonable opportunity to be heard on matters relevant to the proposed administrative**

- rules and to obtain a clear and orderly record; provided that the master shall have the authority to administer a time limit on oral testimony that shall not be less than two minutes per person;
- The master, at his or her discretion, may allow Commissioners present at any hearing to ask clarifying questions of testifiers;
  - The master shall have authority to continue each hearing without notice, other than an announcement at the previous hearing of the date, time, and location of the continuation of the hearing; provided that the master shall only continue a hearing in the event that time constraints do not afford all interested persons present at the hearing a reasonable opportunity to be heard.
  - At the commencement of each hearing, the master shall read the notice of hearing and shall then outline briefly the procedure to be followed;
  - The master shall have authority to take actions which are necessary to conduct an orderly hearing;
  - At the conclusion of each hearing, the master shall announce the date when the Commission's decision shall be made on proposed administrative rules;
  - The master shall report testimony given at all hearings verbatim, through transcripts or recordings, to the Commission, which shall approve said transcripts or recordings;
  - The master shall not question testifiers (except when necessary to get clarification), express views, or commit to action on behalf of the Commission; and
  - The master shall not have authority to represent the Commission or take any actions beyond the terms, conditions, and powers listed herein.